Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 161 of 2006 (S/B)

Dr. Suresh Kumar Maurya
S/o Sri J.P. Maurya, serving as Training Assistant (Farm Manager), Krishi Vigyan Kendra, G.B.Pant University, Majhera (Garampani), District-Nainital.

..... Petitioner

Versus

1. Govind Ballabh Pant University of Agriculture & Technology, Pant Nagar District Udham Singh Nagar through its Registrar.
2. Dr. H.R.Jaiswal R/o IV/1/1166, Jha Colony, Pant Nagar, District-Udham Singh Nagar.

..... Respondents.

Date: 7th June, 2006

Hon'ble P.C. Verma,J.
Hon'ble B.C.Kandpal,J.

This petition has been filed by the petitioner seeking following reliefs:-

A. To issue a writ order or direction in the nature of certiorari to call for the record and for quashing the impugned order dated 17.05.2006 passed by Chief Personnel Officer of G.B.Pant University of Agriculture & Technology, Pant Nagar whereby Respondent No.2 has been appointed on the post of Junior Vegetable Agronomist/Junior Research Officer (Vegetable Science) pursuant to selection in question.

B. To issue a writ order or direction in the nature of mandamus commanding the Respondent No. 1 to appoint the petitioner on the post of Junior Vegetable Agronomist/Junior Research Officer (Vegetable Science) from a deemed date.

C. To issue a writ order or direction in the nature of mandamus commanding the respondent No.1 to grant all consequential benefits including seniority to the petitioner.

D. To issue any other writ order or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the case.

E. Award the cost of the writ petition in favour of the petitioner.

2. The above quoted prayer have been made by the petitioner on the basis of facts and the ground narrated hereafter.

3. The petitioner is aggrieved by selection of respondent No.2 for appointment to the post of Junior Research Officer (Vegetable Science). The said selection is, inter alia, challenging on the ground that he does not possess the essential qualification i.e. Doctorate Degree in Vegetable Science. The petitioner is a Member of O.B.C. Category and Doctorate Degree in Vegetable Science was awarded to him in the year 2003. It is alleged that the petitioner appeared in National Eligibility Test conducted by Indian Council for Agricultural Research in October 2001 and he was declared successful and certificate to this effect was issued on 17.7.2002. He again qualified National Eligibility Test

(NET) held in the month of June 2004 and a certificate to this effect was issued by the Indian Council for Agricultural Research on 26.7.2005. The petitioner alleged that the Indian Council for Agricultural Research holds selection for Agricultural Research Service through the Agricultural Scientist Recruitment Board and candidates with higher merit in the examination are called for interview for appointment in Agricultural Research Service while others who qualify the examination are awarded NET certificate. In June 2004 petitioner had applied for appointment in Agricultural Research Service and by virtue of his superior merit, he was called for interview. The petitioner could not secure appointment. The petitioner has consistently good academic record. The petitioner was appointed as Training Assistant (Farm Manager) in Krishi Vigyan Kendra, Majhera, District Nainital on 15.6.2005. The said kendra is run by G.B.Pant University of Agriculture and Technology, Pant Nagar. The respondent No. 1-University issued employment notice whereby applications from eligible candidates were invited upto 16.11.2005. The posts advertised include Junior Vegetable Agronomist /Junior Research Officer (Vegetable Science). According to the advertisement, essential qualification for the aforesaid post is Doctorate Degree in the subject concerned. It was also provided that NET will be essential requirement in the Disciplines where NET is conducted by Indian Council for Agriculture Research. It was also provided that candidates who have not qualified NET shall be considered only if NET qualified candidates are not found suitable for appointment. The petitioner applied for the said post. There were only three

candidates for the said post including the petitioner and respondent No.2. The petitioner was called for interview, which was to be held on 19.4.2004. The respondent No.2 has Doctorate Degree in Horticulture from Agra University with thesis work on Fruits and the title of his thesis is "Studies of Morphological and Reproductive Characters of some Strains of Bael". (Botanical name of Bael is *Aegle marmeles Correa).* The petitioner alleged that the respondent No.2 does not possess Doctorate Degree in Vegetable Science/Vegetable Crops. The said Doctorate Degree was awarded to the respondent No.2 without undergoing any course of study whereas the petitioner studies various courses on Vegetable Science during Ph. D. programme. There are also the norms of the respondent No.1/University for awarding weightage to Ph.D. Degree with course and the petitioner is holding Ph.D. degree with course.

4. The petitioner also alleged that as per the eligibility conditions provided in the advertisement, the respondent No.2 was eligible for the post of "Junior Horticulturist/Junior Research Officer Horticulture-AICRP on Sub Tropical Fruits" The respondent No.2 in fact applied for the said post mentioned at serial No.81 in the advertisement but was declared unsuccessful. The petitioner did not possess the eligibility conditions for the post mentioned at serial No.81 and as a natural corollary the respondent No.2 was also ineligible for the post mentioned at serial No.72 i.e. Junior Vegetable Agronomist/Junior Research Officer (Vegetable Science). The respondent No.2 did not possess requisite eligibility conditions for the post of Junior Research Officer

(Vegetable Science) and he was erroneously called for interview by completely ignoring the eligibility conditions mentioned in the advertisement. It is alleged that in view of academic qualifications and superior merit of the petitioner, he had a preferential claim for the post in question. By virtue of his NET qualification also, the petitioner was entitled for preference in the process of selection. The condition regarding NET in the advertisement makes it clear that candidates with NET qualification will be considered only if NET qualified candidates are not found suitable. The petitioner has not been declared unsuitable for the post in question. The respondent No.2 was selected and recommended for appointment for the post of Junior Research Officer (Vegetable Science). The petitioner submitted representation 16.5.2006 to the Vice Chancellor of the University pointing out the discrepancies in the selection process. The University issued appointment letter to respondent No.2 for the post of Junior Vegetable Agronomist/Junior Research Officer (Vegetable Science) on 17.5.2006 by ignoring the claim of the petitioner.

5. The respondent No.1- University contended that the candidates who had applied for the post were called for the interview as recommended by the screening committee. The interview was held on 19.4.2006 and after the approval of the Board of Management in the 200th meeting, the appointments were issued after taking the administrative approval of the Vice Chancellor. In reply the University submitted that the Ph.D. Degree in Horticulture also covers the Vegetable Science. Many Universities do not have separate degree in Vegetable

Science and it is the part of Horticulture. The respondent No.2 has Ph.D. degree from Agra University where there is no separate Ph.D. degree in Vegetable Science and the academic career of respondent No.2 is excellent as well as the work done in the field of Vegetable Science is also better than the petitioner. The curriculum vitae submitted by respondent No.2 is much better than the resume submitted by the petitioner. It is also contended that the post was earmarked for O.B.C. candidate in the advertisement and the respondent No.2 is also O.B.C. candidate. It is also contended by the university that the petitioner has only four years' experience including SRF/TA and as a Farm Manager in comparison to the person selected for the post. The respondent No.2 has 18 years experience as a Research Associate and STA in Vegetable Crop. He has been working in the same project as STA for the last 11years. In the advertisement it was mentioned that the Ph.D. holders before December 2002 were exempted from appearing in the NET examination and the respondent No.2 has completed his Ph.D. degree in the year 1998. The respondent No.1-University also contended that Degrees are recognized by Association of Agricultural Universities and the respondent No.1-University cannot down grade the degree of the one University in comparison to other University. It was not mentioned in the advertisement that a Ph.D. degree without course work will not be considered. However in addition to the above, the Selection Committee has taken care of degree with course or without course by giving the weighate as 15 and 12 marks. It is also contended that the selection of respondent No.2 was made on merits keeping in view the demand of the job and overall

Performance in the interview. The appointment of respondent No.2 is also duly approved by the Board of Management which is appointing authority of a teacher.

6. The respondent No.2 also contested the case and contended that he has fairly submitted his candidature. He also contended that degrees awarded by any recognized University cannot be discriminated on the basis of Ph.D. with course and without course. The assessment of academic qualification and suitability of the candidate was to be judged by the Selection Committee. The decision of Selection Committee is final. He alleged that the allegations to the contrary are baseless and misconceived.

7. We have heard Sri Manoj Tiwari, learned counsel for the petitioner, Sri Rajendra Dobhal, learned counsel for respondent No.1and Sri S.N.Bbulkar, learned Sr. Advocate for the respondent No.2.

8. The advertisement published in the News Paper, contained in Annexure No. 7 to the writ petition, specifically provides the qualification for the post of "Junior Vegetable Agronomist/Junior Research Officer Vegetable Science-AICRP on Vegetable, which reads as follows:-

> **"Essential**
> 1. Doctorate degree in the subject concerned with consistently good academic record
> 2. Two years teaching / research / extension experience.
>
> **Note**
>
> Ph.D. will be taken as two years experience for Assistant Professor/JRO only."

The advertisement further provides as under:-

> "For Assistant Professor or equivalent only NET will be essential requirement in the disciplines where NET is conducted by the ICAR/UGC/CSIR or any other Central Government Agency with the relaxation given by UGC/ICAR from time to time which at present is "The candidates who have completed M.Phil degree by 31st December, 1993 or have submitted Ph.D. thesis in the concerned subject on or before 31st December, 2002 are exempted from appearing in the NET examination. In case, such candidates fail to obtain Ph.D. degree they shall have to pass the NET examination." NET will not be essential requirement in the disciplines in which NET is not conducted. **However, in case the candidates with Masters degree with NET are not available or NET qualified candidates are not found suitable, then only other candidates shall also be considered for appointment."**

9. It is not disputed that the post of "Junior Vegetable Agronomist/Junior Research Officer Vegetable Science, Net is conducted and the petitioner has qualified the NET examination. Therefore in terms of advertisement highlighted above the petitioner and others who had qualified NET ought to have been considered first, if no candidate who had passed NET examination was found suitable only then the candidature of other candidates could be considered who were Ph.D. and have not passed NET examination.

10. The clause of the advertisement highlighted above has overriding effect.

11. The detailed performance chart for Assistant Professors or equivalent posts for the post advertised at Sl. No. 2 of the Advertisement i.e. Junior Vegetable

Agronomist/JRO Vegetable Sc. – AICRP on Vegetable – I for OBC, date of interview 19.04.2006 is reproduced as under:-

DETAILED PERFORMANCE CHART FOR ASSISTANT PROFESSOR OR EQUIVALENT POSTS

For the post of – (72) Junior Vegetable Agronomist/JRO Vegetable Sc. – AICRP on Vegetable – I for OBC Date of Interview – 19.04.2006

Sl. No.	Name of the Candidate	Marks awarded for academic qualifications (I div. 100% II Div. 40%)					Experience Publica-Tions & achieve-ments	Interview	Total	Remark
		High School 10	**Inter** 10	**Graduate** 10	**Post Graduate** 15	**Ph.D.** 15	20	20	100	
1.	Dr, (Mrs.) Alka Verma	10	10	10	15	15	01	10	71	II
2.	Dr. H.R. Jaiswal	8	10	10	15	12	12	15	82	I
3.	Dr. S.K. Maurya	8	8	10	15	15	10	12	78	II

12. It has been stated in the counter affidavit that the Selection Committee has not given the marks on the NET qualification separately at there is no separate course of NET and it does not amount to any superior specialization than that of Ph.D. It is only a qualifying test. The Ph.D. in Horticulture covers Vegetable Science, as many universities do not have separate Ph.D. course in Vegetable Science. Hence it is a part of Horticulture. It has been further stated by the respondent No.1-University that the selected candidate is more meritorious and the work done in the field of Vegetable Science is also better than the petitioner.

13. The examination for qualifying the NET is held for a particular discipline and only meritorious candidates can pass the aforesaid examination on the basis of their merit having study of the entire course as prescribed by the UGC/ICAR. It is also clear from the chart prepared by the Selection Committee, reproduced

above, that the NET qualified candidate has been compared with a candidate who is not NET qualified. Thus, the selection making process/procedure adopted by Selection Committee for selection of the candidates is contrary to the overriding condition contained in the advisement.

14. Reliance is placed in the case **N.T. Devin Katti and others versus Karnataka Public Service Commission and others,** reported in **(1990) 3 Supreme Court Cases, 157,** wherein the selection made in accordance with amended rules which changed earlier reservation rule was made. The Apex Court set aside the selection and in Para 11 held as under:-

> "Candidates who apply and undergo written or vive voce test acquire vested right for being considered for selection in accordance with the terms and conditions contained in the advertisement, unless the advertisement itself indicates a contrary intention. Generally, a candidate has right to be considered in accordance with the terms and conditions set out in the advertisement as his right crystallises on the date of publication of advertisement, however he has no absolute right in the matter. If the recruitment Rules are amended retrospectively during the pendency of selection, in that event selection must be held in accordance with the amended Rules."

15. Thus, in view of the advertisement quoted above it has specifically been made a condition that when NET qualified candidates are not available only then the other candidates who have not NET qualified would be considered. Therefore, the candidature of other candidate who is not NET qualified violated the right to the NET

qualified candidate which crystallises in terms of advertisement. The advertisement only indicates that other persons shall be considered in case of non-availability of the NET qualified candidates. Therefore, considering the NET qualified candidate alongwith the non-NET qualified candidate is a procedure contrary to the condition of the advertisement adopted by the Selection Committee which has vitiated the selection procedure.

16. The learned counsel for the respondent No.2 Sri S.N.Babulkar has placed before us the judgment of three-judge-Bench of the Hon'ble Supreme Court in case **Dalpat Abasaheb Solunke, etc. etc. versus Dr. B.S.Mahajan etc. etc.**, reported in **AIR 1990 Supreme Court, 434** to substantiate that once the selection is made the Court should not interfere. In the said judgment the Apex Court has also held as under:-

> "The decision of the Selection Committee can be interfered with only on limited grounds such as illegality or patent material irregularity in the constitution of the Committee or its **procedure vitiating the selection,** or proved mala fides affecting the selection etc."

17. We have found that by adopting the procedure which is against the advertisement vitiates the entire selection procedure. Therefore, the selection so made cannot be sustained in the eye of law.

18. Thus, we allow the writ petition and quash the selection/appointment dated 17.05.2006 of respondent No.2 for the post of Junior Vegetable Agronomist/Junior

Research Officer (Vegetable Science). Now the respondent No.1-University may proceed to hold fresh selection in terms of advertisement of those candidates who had applied within time for the post. No order as to costs.

Since the writ petition has been allowed on the point of adopting wrong procedure in the selection of the candidates by the respondent-University, therefore we have not adverted to any other point.

(B.C.Kandpal,J.) **(P.C.Verma,J.)**

07.06.2006 07.06.2006

P.Singh